

# PRECEDENT DECISION PROCEDURES<sup>1</sup>

## I. INTRODUCTION

The California Welfare and Institution Code requires the California Department of Social Services (CDSS) to provide fair hearings for applicants and recipients of public social services who are dissatisfied with county actions relating to the receipt of social services. The State Hearings Division (SHD) is responsible for providing impartial hearings and rendering independent decisions. Historically, no legal authority existed to designate any of these decisions as Precedent Decisions (PD) in order to provide the Department with consistency in interpreting statutes, rules and regulations. The issuance of Precedent Decisions can help the Department to achieve the desired consistency.

The Administrative Procedures Act (APA)<sup>2</sup> recognizes the need of government agencies to clarify law and policy through the administrative hearing process. The APA now provides the legal authority for agencies to establish certain administrative law judges decisions as PD. These PD provide program staff, Administrative Law Judges (ALJs) and the parties consistent Department interpretation and application of statutes, rules, regulations, and policies. The PD should resolve significant interpretation differences among the Department program staff, counties, advocacy groups and ALJs. The ongoing development of policies, All-County Letters, notices, regulations and statutes resulting from welfare reform require establishing a mechanism to assure departmental consistency. Consistent with the legal authority provided in the APA, the Department is establishing a PD process. The SHD has been delegated the responsibility to implement the PD program by establishing a Precedent Decision Unit (PDU) in the division's Quality Improvement Bureau (QIB).

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<sup>1</sup> Procedures revised effective September 2000

<sup>2</sup> Government Code Section 11370

## II. AUTHORITY

The APA<sup>3</sup> allows the following guidelines for selecting administrative law judge decisions for consideration as PD:

1. A PD must involve (1) a significant legal or policy determination of general application, and (2) a legal or policy determination that is likely to recur.
2. An entire decision or part of a decision may be designated as a PD.
3. The Director may designate certain decisions as PD and may reconsider at his or her discretion a previously issued decision solely to determine whether or not the decision should be designated as a PD. Once a PD is issued the ALJs and other Department staff shall be required to follow those precedents, except as modified by the Director or after judicial review. In the latter case, the Director shall modify the PD to conform to the judgement of the court.

The CDSS has established the following PD procedures.

## III. IDENTIFICATION OF ISSUES FOR PRECEDENT DECISIONS

These procedures identify various ways a potential PD may be brought to the attention of the Director for consideration:

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<sup>3</sup> Government Code Section 11425.60

## Sources of Precedent Decision Referrals

The three sources of potential Precedent Decision referrals (State Hearings Division, CDSS program bureaus, and the Legal Division) are discussed below:

1. State Hearings Division

ALJs may refer decisions for consideration as PD to their Presiding ALJ (PALJ). PALJs may also select decisions for consideration. SHD may also get input from counties, county organizations (CWDA, NCAC, and SCAC), advocate groups and other Department personnel. The PALJ may attempt to clarify the issue by discussing it with appropriate program staff and, if necessary, with Legal Division staff. The PALJ shall forward the recommended decision along with the Precedent Decision Referral Form (Attachment A, see Page 8) to the PDU for consideration.

2. CDSS Program Bureaus

Programs may identify issues concerning policy/legal interpretations of regulations, which may be appropriate for consideration for PD. They may also be input from counties, county organizations (CWDA, NCAC, and SCAC), advocate groups and other departmental personnel. The Program Precedent Decision Contact Person will complete a Precedent Decision Referral Form for each recommendation and forward it to his/her Program Chief for review and consideration. The Program Chief may consult with Legal Division or SHD staff. A recommended decision, along with the Precedent Decision Referral Form is forwarded to the PDU.

### 3. Legal Division

Attorneys in the Legal Division may identify significant and recurring rehearing issues that may qualify as Precedent Decisions. These issues may be referred to the Assistant Chief Counsel for review. The Assistant Chief Counsel may consult with appropriate Program or SHD staff. If the Assistant Chief Counsel concurs and the rehearing is granted, the Legal Division's rehearing memo will indicate that this case has PD potential. After the ALJ conducts the rehearing and the decision is adopted, the Legal Division Assistant Chief Counsel, through the Legal Division Contact Person, may submit the decision and a completed Precedent Decision Referral Form to the PDU. Each of the divisions participating in the PD process will designate a Precedent Decision Contact Person to be responsible for processing the PD.

## IV. SELECTION OF ISSUE FOR PRECEDENT DECISION

### General Procedures:

1. The Precedent Decision Selection Committee will be established to review all referrals for PD consideration. The committee will be composed of the Chief Deputy Director; the Program Deputy (ies) involved with the PD referrals, the General Counsel of the Legal Division, and the Chief Administrative Law Judge of SHD.
2. All recommendations for Precedent Decision consideration must be sent by the originating office's Precedent Decision Contact Person to the State Hearing Division's PDU, along with a completed Precedent Decision Referral Form. The Precedent Decision Referral Form will be logged in and assigned a number. The

2. All recommendations for Precedent Decision consideration must be sent by the originating office's Precedent Decision Contact Person to the State Hearing Division's PDU, along with a completed Precedent Decision Referral Form. The Precedent Decision Referral Form will be logged in and assigned a number. The attached decision will be copied and sent concurrently to the contact person in each office (Legal, SHD, and the appropriate Program Bureau) with a Precedent Decision Approval Form. After consideration, the contact person will forward the decision, along with the completed Approval Form to the PDU. The Precedent Decision Approval Forms must be returned to the PDU regardless of whether the referral is approved or not approved.
3. If one or more divisions approve the recommendation for a PD, a representative of the initiating office will be responsible for presenting the proposed PD before the Precedent Decision Selection Committee. The PDU will schedule each meeting, as appropriate, and will be responsible for notifying all parties of the date and time of the meeting.
4. If, after presentation and discussion, the Chief Deputy Director approves the decision as a potential PD, he/she will present it to the Director for review and/or approval.

#### V. PUBLICATION OF PRECEDENT DECISION

If the Director approves the recommendation for PD status, the file is sent back to the PDU for distribution in an All-County Letter. In addition, the PDU will distribute copies to all interested parties. The PDU will also keep a "library" of all approved PD, as well as a computer listing of all PD, both by subject and by approval date. The PDU will also keep on file all decisions that were considered for PD status but not approved. In case of judicial review, the Director shall modify the PD to conform to the judgement of the court.

Attached are copies of the Precedent Decision Referral Form (Attachment A) and the Precedent Decision Flow Chart (Attachment B). If you have any questions or need additional information, please contact Presiding Administrative Law Judge, Laurence H. Geller, at (916) 229-4174.